

Legal Rights of Union Stewards or Delegates

In addition to the contractual rights found in our Industry Wide Agreement, there also exist legal rights that protect Delegates. The origins of these rights are found in law (especially the National Labor Relations Act) and in decisions of the Supreme Court and the National Labor Relations Board (NLRB).

These legal rights include, but are not limited to, a general principle of equal status with management when functioning as Steward; a right to solicit grievances; and a right to active participation in a Weingarten setting.

The general principle of equal status with management -

By its very nature, a Delegate's job requires vigorous advocacy, even confrontation. Confrontation, however, conflicts with the usual rules of employee conduct, which stress obedience to supervisors. (Virtually all arbitrators subscribe to the "obey now - grieve later" rule as it applies to employees.) If Representatives had to live by these rules, they would be in a hopeless situation. They would be faced with a choice of not being an effective advocate, or risk being disciplined. A recent example involved a supervisor who ordered a Steward not to investigate a possible grievance off the clock, while at the same time, refused to allow time on the clock.

The NLRB and the courts have recognized this problem and have created a special legal status for Delegates when they engage in union business - they are considered to be equals with management. This means that conduct which might otherwise result in discipline must be tolerated.

As the NLRB has stated: The relationship at a grievance meeting is not a "master-servant" relationship but a relationship between company advocates on the one side and union advocates on the other side, engaged as equal opposing parties in litigation.

In a similar vein, the US Supreme Court has said the National Labor Relations Act contemplates robust debate and gives a union license to use intemperate, abusive, or insulting language without fear of restraint or penalty if it believes such rhetoric to be an effective means to make its point.

There are two important limits to the equality principle. First, conduct by a Delegate which the NLRB considers outrageous or indefensible is not protected. Second, the equality principle only applies when the Delegate is acting in an official capacity.

Outrageous or indefensible conduct includes extreme unprovoked profanity, racial slurs, physical threats, or striking a supervisor.

The equality principle only applies when the Delegate is acting in a role as Delegate, (i.e., presenting a grievance or requesting information. The principle does not apply when the Delegate is not acting in the capacity of Delegate).

Arbitrator Levak, in APWU case W8C-5D 20644, analyzed some general principles relating to Delegates in a protected status, by doing an exhaustive review of prior arbitration decisions on the subject. He identified three categories of Delegate activity: 1) where a Delegate is personally abusive to a supervisor; 2) where a Delegate disrupts production; and 3) where a Delegate threatens or assaults a supervisor.

1) Personal abusiveness. During a closed grievance meeting to discuss Union matters a Delegate possesses a special status. The parties meet as equals and a Delegate has wide latitude in what he does and says.

However, when a grievance meeting or discussion is not closed, but is observable by other employees - whether in a grievance meeting or on the workroom floor - a Delegate has less immunity and must not become personally abusive.

2) Disruption of production, A Steward loses immunity status when engaging in conduct that interferes with management's right or ability to operate. Thus, a Steward is not prohibited from interrupting his own work to talk to a supervisor about a Union related matter. However, such a Steward is in a work duty status; therefore, he must conduct himself in a non-disruptive, professional manner at all times.

Furthermore, since he is in a work duty status, he must return to work if instructed to do so by his supervisor. If he believes the supervisor is violating the contract, or has no authority to order him to return to work, "obey now - grieve later" is the rule.

3) Threats or assaults. Threats of harm, or assaults, or attempted assaults are never protected. A Steward who engages in such activity loses all privileged status, and is subject to immediate discipline.

The right to solicit grievances - There is a common belief among managers that union Delegates may not solicit grievances that they may file grievances only if employees complain and ask them to file. This notion is false. The NLRB has specifically ruled, the solicitation of grievances is a protected activity for Delegates as well as other employees.

The right to active participation in a Weingarten setting - The Supreme Court held, in a case known as Weingarten, that an employee who is being questioned by management, and who has a reasonable belief that discipline may ensue, has a right to representation prior to answering questions. The right must be invoked by the employee. A Delegate has no right to invoke it for the employee. In other words, the employee must request a Delegate.

However, once an employee invokes Weingarten, and a Delegate is brought in, the Delegate has a right to assist and counsel the employee.

Management sometimes asserts that the Delegate may only be a silent witness. This is wrong. The Delegate has the following rights:

- When the Delegate arrives, the supervisor must inform the Delegate of the subject matter of the interview.
- The Delegate must be allowed to take the employee aside for a private pre-interview conference.
- The Delegate must be allowed to speak during the interview.
- The Delegate has the right to request that the supervisor clarify a question so that the employee understands what is being asked.
- After a question is asked, the Delegate can give advice on how to answer.
- When the questioning ends, the Delegate can provide additional information to the supervisor.
- It should be noted that, if the Weingarten rules are complied with, Delegates do not have the right to tell workers not to answer questions.

Delegates will be most effective if they are knowledgeable about their legal rights as well as their contractual rights. When management violates the legal rights of Delegates, the judicious use of charges against the employer with the NLRB can be effective in educating management about their legal responsibilities.